

1 RICK A YARNALL
Chapter 13 Bankruptcy Trustee
2 Daniel Riggs, Esq.
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5

6 UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA
7

8 In re:

9 SANTOS D. RIVAS GARCIA and
10 SARA RIVAS,

11 Debtor.

BK-S-16-16487-LED
Chapter 13

Hearing Date: March 9, 2017
Hearing Time: 2:00 p.m.

12 **TRUSTEE'S MOTION TO DISMISS CASE**
13 **PURSUANT TO 11 U.S.C. § 1307(c)(1) AND (4)**
14

15 COMES NOW Chapter 13 Bankruptcy Trustee, RICK A. YARNALL, by and through his
16 counsel of record, Daniel Riggs, Esq., and hereby moves this Honorable Court for an Order
17 dismissing the instant case for unreasonable delay by the debtor that is prejudicial to creditors
18 pursuant to 11 U.S.C § 1307(c)(1) and for failure to commence making timely plan payments
19 pursuant to 11 U.S.C § 1307(c)(4) .

20 The instant case was filed on December 5, 2016 and Debtors' chapter 13 plan was filed on
21 December 19, 2016. See Docket No. 11. To date, the Debtors have failed to set a confirmation
22 hearing on Plan No. 1.

23 Section 1307(c)(1) states that a case may be dismissed or converted for unreasonable delay by
the debtor that is prejudicial to creditors. The Debtors' plan was filed on December 19, 2016 but has

1 not been set for a hearing. Debtors' delay in noticing their plan for confirmation is unreasonable
2 because their case has been pending going on two months without a confirmation hearing being set
3 on the Court's calendar. Further, their creditors are harmed by the delay because the automatic stay
4 is in effect while the Debtors have done nothing to move their case forward.

5 Further, Section 1326(a)(1) requires Debtors to commence making plan payments no later
6 than 30 days after the commencement of the case. Section 1307(c)(4) states that a case may be
7 dismissed for failure to commence making timely payments under Section 1326. In this case, the
8 Debtors were required to commence making payments on January 4, 2017. To date, the Debtors
9 have not made a payment.

10 Therefore, Trustee requests the Court to dismiss this instant case based on the foregoing
11 reasons.

12 WHEREFORE, the Trustee respectfully requests that this Honorable Court issue an Order
13 dismissing the instant case for failure to commence making payments, and unreasonable delay by
14 failing to set a confirmation hearing.

15 DATED this 1st day of February, 2017.

16
17 Submitted by:

18
19 

20 Daniel Riggs, Esq.
21 Nevada Bar No. 12270
22 701 Bridger Ave., Suite 820
23 Las Vegas, NV 89101
Attorney for RICK A. YARNALL,
Chapter 13 Bankruptcy Trustee

[PROPOSED ORDER]

RICK A YARNALL
Chapter 13 Bankruptcy Trustee
Daniel Riggs, Esq.
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E-Filed: _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

SANTOS D. RIVAS GARCIA and
SARA RIVAS,

Debtor.

BK-S-16-16487-LED
Chapter 13

**ORDER ON TRUSTEE'S MOTION TO
DISMISS CASE PURSUANT TO 11 U.S.C. §
1307(c)(1) AND (4)**

Hearing Date: March 9, 2017
Hearing Time: 2:00 p.m.

Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. § 1307(c)(1) and (4) having come on for hearing in the above-entitled Court on March 9, 2017, at 2:00 p.m., with counsel appearing on behalf of Chapter 13 Bankruptcy Trustee, RICK A. YARNALL, other appearances as noted on record, argument having been heard, and based upon the papers and pleadings on file herein, and good cause appearing:

///

1 IT IS HEREBY ORDERED that Trustee's Motion is GRANTED and the above captioned
2 bankruptcy proceeding is DISMISSED pursuant to 11 U.S.C. § 1307(c)(1) and (4);

3 IT IS SO ORDERED.

4 Submitted by:

5 Date: _____

6 Daniel Riggs, Esq.
7 Attorney for Rick A. Yarnall,
Chapter 13 Bankruptcy Trustee

8
9
10
11 In accordance with LR 9021, counsel submitting this document certifies that the order accurately
12 reflects the court's ruling and that (check one):

13 ☐ The court has waived the requirement set forth in LR 9021(b)(1).

14 ☐ No party appeared at the hearing or filed an objection to the motion.

15 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the
16 hearing, and any unrepresented parties who appeared at the hearing, and each has
approved or disapproved the order, or failed to respond, as indicated below [list each
17 party and whether the party has approved, disapproved, or failed to respond to the
document]:

18 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this
19 order with the motion pursuant to LR 9014(g), and that no party has objected to the
form or content of the order.

20 Date: _____

21 An Employee of Rick A. Yarnall
22 Chapter 13 Bankruptcy Trustee

23 ###

CERTIFICATE OF MAILING

I hereby certify that I am an employee of RICK A. YARNALL, Chapter 13 Trustee; that I am over the age of 18 years; and that on the 18 day of February, 2017, I provided a copy of the **Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. § 1307(c)(1) and (4) and Notice of Hearing** to each of the following by:

[X] a. ECF System:

- **ARNOLD L. GRAFF** ecfnvb@aldridgepite.com, ALG@ecf.inforuptcy.com
- **JOHN R. HOLIDAY** jholiday@clgnv.com, clgnvecf@gmail.com

[X] b. United States mail, postage fully prepaid:

SANTOS D. RIVAS GARCIA
SARA RIVAS
3555 E. Lake Mead Blvd. Apt. 294
Las Vegas, NV 89115

[] c. Personal Service

[] d. By direct email (as opposed to through the ECF System)

[] e. By fax transmission



/s/ Leah Engel

Leah Engel, an Employee of
RICK A. YARNALL
CHAPTER 13 BANKRUPTCY TRUSTEE